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NORTHERN DISTRICT OF CALIFORNIA

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. DISTRICT OF CALIFORNIA
2013

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Attorneys for the United States of America

[UNDER SEAL],

Plaintiffs,

10

[UNDER SEAL],

Defendant.

) Case No. C 12-2698 SI

UNITED STATES' AND STATE OF CALIFORNIA'S JOINT NOTICE OF ELECTION TO DECLINE INTERVENTION

FILED UNDER SEAL

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FILED

JAN 1 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Attorneys for the United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, *ex rel.*) Case No. C 12-2698 SI
RUSTY FRYBERGER, *et al.*,)
Plaintiffs,)
v.)
KIEWIT PACIFIC COMPANY, *et al.*,)
Defendant.)
UNITED STATES' AND STATE OF
CALIFORNIA'S JOINT NOTICE OF
ELECTION TO DECLINE
INTERVENTION
FILED UNDER SEAL

Pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Pursuant to the California False Claims Act, California Government Code section 12652 (c)(8)(D)(iii), the State of California notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.* The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States only has the right to a hearing when it objects to a settlement or dismissal of the

1 action. U.S. ex rel. Green v. Northrop Corp., 59 F.3d 953, 959 (9th Cir. 1995); U.S. ex rel.
2 Killingsworth v. Northrop Corp., 25 F.3d 715, 723-25 (9th Cir. 1994).

3 Therefore, the United States requests that, should either the relators or the defendants
4 propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the
5 United States with notice and an opportunity to be heard before ruling or granting its approval.

6 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all
7 pleadings filed in this action be served upon the United States. The United States also requests
8 that orders issued by the Court be sent to the Government's counsel. The United States reserves
9 its rights to order any deposition transcripts and to intervene in this action, for good cause, at a
10 later date.

11 California Government Code section 12652(c)(1) states that once filed, the action may be
12 dismissed only with the written consent of the Court and the California Attorney General. As
13 such, the State of California requests that it be given an opportunity to be heard before the Court
14 rules on, or grants its approval to, any settlement of this action. The State of California also
15 reserves its right to intervene in this action, for good cause, at a later date. (Cal. Gov. Code §
16 12652(f)(2)(A).)

17 As set forth in Government Code section 12652(f)(1), the State of California requests that
18 the parties serve the State of California with a copy of all pleadings subsequently filed in this
19 action. Service should be directed to Jennifer McClory Hamilton, Deputy Attorney General,
20 False Claims Unit, at the address listed below. Upon request, the State of California shall be
21 supplied with copies of deposition transcripts at its expense.

22 Furthermore, in accord with Government Code section 12656, the State of California
23 requests that the parties serve the State of California with a copy of the notice or petition
24 initiating any appeal and each paper, including briefs, filed in the appeal.

25 //

26 //

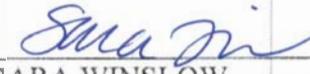
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1 Respectfully submitted,

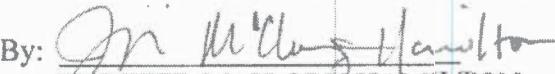
2 MELINDA HAAG
3 United States Attorney

4 Dated: January 15, 2013

5 By: 
6 SARA WINSLOW
7 Assistant United States Attorney

8 KAMALA HARRIS
9 Attorney General of the State of California

10 Dated: January 10, 2013

11 By: 
12 JENNIFER McCLORY HAMILTON
13 Deputy Attorney General
14 Attorney for the State of California
15 California Department of Justice
16 Office of the Attorney General
17 455 Golden Gate Ave., Suite 11000
18 San Francisco, CA 94102-7004

19 [PROPOSED] ORDER

20 The United States and the State of California having declined to intervene in this action
21 pursuant to the Federal False Claims Act, 31 U.S.C. § 3730(b)(4)(B), and the California False
22 Claims Act, Cal. Gov't. Code § 12652 (c)(8)(D)(iii), respectively, the Court rules as follows.

23 IT IS HEREBY ORDERED that:

24 1. All current contents of the Court's file in this action shall remain under seal and not be
25 made public or served upon the defendants, except for the Complaint, the First Amended
26 Complaint, this Order, and the accompanying United States' and State of California's Joint
27 Notice of Election to Decline Intervention, which are hereby unsealed.
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1 4. The seal shall be lifted as to all other matters occurring in this action after the date of
2 this Order.

3 5. The parties shall serve all pleadings and motions filed in this action, including
4 supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The
5 United States may order any deposition transcripts and is entitled to intervene in this action, for
6 good cause, at any time.

7 6. All orders of this Court shall be sent to the United States.

8 7. Should the relators or the defendant(s) propose that this action be dismissed, settled, or
9 otherwise discontinued, the Court will provide the United States with notice and an opportunity
10 to be heard before ruling or granting its approval.

11 8. The parties shall serve all pleadings and motions filed in this action, including
12 memoranda, upon the State of California, as provided for in California Government Code section
13 12651(f)(1). The State of California may order any deposition transcripts and is entitled to
14 intervene in this action, for good cause, at any time.

15 9. Should the relators or the defendant(s) propose that this action be dismissed, settled, or
16 otherwise discontinued, the Court will provide the State of California with an opportunity to be
17 heard before ruling or granting its approval.

18 10. The parties will provide the State of California a copy of the notice or petition
19 initiating any appeal and each paper, including briefs, filed in the appeal.

20 IT IS SO ORDERED.

21 Dated: 1/15/13



22 SUSAN ILLSTON
23 United States District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**UNITED STATES' AND STATE OF CALIFORNIA'S JOINT NOTICE OF ELECTION
TO DECLINE INTERVENTION**

to be served this date upon the persons indicated below at the addresses shown:

Jennifer McClory Hamilton
Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004

Bruce Babbitt
Jameson Babbitt Stites & Lombard
999 Third Ave. #1900
Seattle, WA 98104

BY FIRST CLASS MAIL by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

CERTIFIED MAIL (#) by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

BY PERSONAL SERVICE (BY MESSENGER): I caused such envelope to be delivered by hand to the person or offices of each addressee above.

BY FACSIMILE (FAX): I caused each such document to be sent by facsimile to the person or offices of each addressee above.

BY E-MAIL: I caused each such document to be sent by e-mail to the person or offices of each address above.

BY FEDERAL EXPRESS

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed January 15, 2013 at San Francisco, California.

Yvette Baird
YVETTE BAIRD
Supervisory Legal Assistant